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BULLETIN**

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# THE BAR ASSOCIATION BULLETIN

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## The Municipal Court

(Continued from previous issue)

By HENRY M. WILLIS, Presiding Judge

### RIGHT TO CHANGE PLACE OF TRIAL

The foregoing statements purport to embrace claims as to the extent and limitations of jurisdiction of these two courts of record where both exist in a particular county, and when or in what cases such jurisdiction is exclusive or concurrent with that of another court. All such cases as are not within the exclusive jurisdiction of the Municipal Court, but of which it has original jurisdiction, are subject to the right of a defendant to demand a change of place of trial, as provided in Chapter I of Title Xa, Code of Civil Procedure, a new title added to the Code in 1925. The sections of this Chapter numbered 831, 831a, 831b, 831c and 831d correspond respectively as to subject matter thereof with old sections 392, 393, 395, 396 and 397 of the same Code, and applicable to Superior Courts only. In drafting and enacting the new sections, particularly Section 831b, the legislature followed and used the language as used in the old sections, where applicable, with the substitution of the word "city" for the word "county" therein, with the result that, as to the cases enumerated in Sections 831, 831a and 831b, there is a mandatory requirement that such cases be tried *in the city* in which the subject of the action is situated or where the

cause of action arose, or where the defendants or some of them reside at the commencement of the action, as the case might be, without taking into consideration the question of whether or not there exists a court in such city having jurisdiction of such case.

Section 831b provides, among other things, that:

"Nothing contained in this chapter shall be construed to limit the power of the Court to hear and determine any of the causes herein enumerated, arising, or where any of the defendants reside within the jurisdictional limits of the Court as established by law."

And Section 831c further provides that:

"If the city in which the action is commenced is not the proper place for the trial thereof, the action may, notwithstanding, be tried therein, unless the defendant, at the time he answers, files an affidavit of merits, and demands, in writing, that the trial be had in the proper place."

It will be recalled that the "proper place" for trial, as specified in the new chapter is, in each instance, designated as "the city where," etc.

There are two Municipal Courts in California cities at present, namely, in this city and in Long Beach. There is a Justices' Court with limited jurisdiction for each township and embracing other cities within the county. The Superior Courts are by law located at the respective county seat cities.

Section 398 C. C. P., as amended in 1925, provides that:

"If an action or proceeding is commenced or pending in a court, and—if, from any cause, the court orders the place of trial changed, it must be transferred for trial to a court the parties may agree upon, by stipulation in writing, or made in open court and entered in the minutes; or, if they do not so agree, then to the nearest or most accessible court, where the like objections or cause for making the order does not exist, as follows: (1) If in a Superior Court, to another Superior Court or to a Municipal Court if the action be cognizable therein. (2) If in a Justices' Court, to another Justices' Court, or to a Municipal Court in the same county. (3) If in a Municipal Court, to another Municipal Court, or to a Justices' Court if the action be cognizable therein; otherwise to a Superior Court."

By reason of the unqualified use of the word "city" in the new chapter, coupled with the language of amended Section 398, just above quoted, a very confusing question has been made capable of arising to confront, and which already has arisen and confronted the judges of the new Court. This question is: What order may the new Court properly make when a demand is made in proper form by a sole defendant in an action at law filed in this new Court, for money or damages exceeding three hundred dollars and less than one thousand dollars, where his affidavit of merits is sufficient, and he is shown to be a resident, at the commencement of the action, of another city in the county, wherein there is no Municipal Court?

Under Subdivision 3 of Section 398 C. C. P., above quoted, such case, on such proper demand and showing, must, in the absence of stipulation of the parties, be transferred for trial to the nearest court where like cause for ordering a change does not exist, and the transfer must be to another Municipal Court or to a Justices' Court, if the action is cognizable therein; *otherwise* to a Superior Court.

In the case stated in the above question, no Municipal Court exists in the "city" where the defendant resides, the Justices' Court therein has no jurisdiction of the cause of action, and the Superior Court is located by law in still another city. There being no Court having

cognizance of the case in the "city" in which the defendant resides, should the Court follow the "otherwise" direction of Subdivision 3, Section 398 C. C. P., above quoted, and transfer the cause to the Superior Court, although that Court is admittedly far removed from the city wherein the defendant resides? Or should the Court hold, under such circumstances, that the city "designated in the complaint" is the proper place of trial, in spite of the language "must be tried in the city in which the defendant resides," or may the Court properly assume that its duty in the premises is discretionary and not mandatory under the language of Section 831d C. C. P., and deny the demand?

And, to present another conundrum, what of the rights of a defendant who resides in the county, but outside of a "city"? Or what of a case arising in the county outside a "city"?

The foregoing quotations and arrangement of the constitutional and statutory provisions embracing the subject, together with the statement of claims advanced, and questions propounded concerning the same, are made for the purpose of bringing these matters to the attention of members of the bar, with expectation that, by so doing, the bar will be aroused to give the subject its best thought and consideration. If there are doubts, efforts should be made to dispel them. If there are omissions, inconsistencies or conflicts, preparations should be made to supply or repair or remove them, as the case may be.

In preparing and publishing this article, I am quoting from the written law, and from the words and expressions of others, avoiding any expression of opinion on my part concerning the matters embraced. In so doing, I am not advancing my personal views but those of others, with the object of arousing discussion and decision of the mooted points, to the end that it may become generally known just what are the limitations of the new court, and what are its needs with respect to constitutional or legislative action, or judicial interpretation or construction.

## Reports of Committees

### Report of Special Committee on the Matter of Application by Disbarred Attorneys for Restoration to Practice

A Special Committee of the Board of Trustees, composed of Trustees Leonard Slosson, Hubert Morrow, and Kemper B. Campbell, has drafted a proposed rule of court to govern the application of disbarred attorneys for restoration to practice, and submitted the same to the Supreme Court for its consideration. The proposed rule is as follows:

#### RULE No. ....

##### Application by Disbarred Attorneys for Restoration to Practice

Subdivision 1. Any person disbarred from the practice of the law by the courts of this state desiring to be readmitted to practice shall file with the clerk of the court to which application is made his verified petition and six copies thereof, containing the following facts:

(a) Name, age and residence of the applicant.

(b) Residence and occupation during the ten years preceding the filing of the petition, stating occupation and particular period of residence at each place named, and names and addresses of employers and business associates.

(c) Education—general and for admission to the bar.

(d) Where and when admitted to the bar.

(e) When and by what court disbarred, and reference to all court and other proceedings relating thereto.

(f) If disbarment involved misappropriation of money or property, whether there has been restoration, and if so, date thereof.

(g) Whether applicant was ever involved in any transaction, other than the one resulting in said disbarment, wherein his professional or moral integrity was brought in question before any court or other tribunal or before any Bar Association; if so, full statement of facts thereof.

(h) Where applicant practiced law, names of persons, if any, with whom he associated in the practice, and the time of such association.

(i) Names of Judges and members of the bar familiar with the practice of the applicant.

(j) Any cases or proceedings of special moment in which applicant participated, names of other counsel involved therein, and reference to published official reports of same.

Applicant shall attach to said petition a certified copy of the accusation or complaint against him, and copy of his answer, if any, thereto, filed in the disbarment proceedings.

Subdivision 2. One copy of such petition shall be transmitted to the Bar Association of the County in which the disbarment proceedings were had, for such action as such Association may consider proper.

Subdivision 3. Such application shall be referred to the State Board of Bar Examiners who shall, unless otherwise specially ordered, investigate and report to the court concerning the moral and mental qualifications of the applicant to practice law and shall make their recommendations in regard thereto.

Subdivision 4. If the applicant, the Bar Association or any other body or person desires to be heard or to present any evidence to the Board of Bar Examiners concerning the applicant, application shall be made to said Board to that effect, and the Board shall prescribe a time and place for the hearing and the presentation of such evidence and give reasonable notice of such hearing to the applicant and the other parties concerned.

Subdivision 5. Hearing of the application and report of the State Board of Bar Examiners shall be fixed by the clerk on a date not

less than thirty (30) days after the filing of such report, and one copy of the report shall, upon the filing thereof, be forthwith transmitted by the clerk to the applicant, and one copy to the Bar Association of the County in

which the applicant was practicing law when disbarred, together with a statement as to the time and place at which the application and report will be heard, at which hearing such Bar Association may be represented.

## Annual Report of Committee on Criminal Law and Procedure

The Committee on Criminal Law and Procedure has made a careful study during the last year of the crime situation in the United States particularly with reference to the administration of criminal justice. The Committee has reached two principal conclusions:

First, that the crime situation, if anything approaching a solution is to be had, must be studied scientifically with a view to ascertaining the underlying causes of crime and the best means of eliminating these causes.

Second, there must be revision of our criminal procedure so as to shake off the palsied hand of the Middle Ages and make the criminal code a living thing, capable of making secure the life and property of the American citizen of the Twentieth Century.

The Committee recognizes that the crime situation presents a national problem. Yet the Los Angeles Bar Association is an organization of only city and county scope and the Committee has borne this in mind in considering its recommendations.

The Committee recommends:

That the Los Angeles Bar Association organize a committee or commission to make a scientific yet practical study of the underlying causes of crime, especially as they exist in Los Angeles County.

This committee or commission should make as thorough a study as possible and approach the problem as a physician takes up the problem of his patient. It should aim to find out what part ignorance, poverty, improper environment, lack of moral and religious training, insanity and other diseases may play in giving to 98 per cent of our citizens the burden of coping with perhaps 2 per cent who comprise the professional criminals.

This commission would require financing, and the Committee on Criminal Law and Procedure therefore recommends that the City Council of Los Angeles and the Board of Supervisors of Los Angeles County be urged to make appropriations sufficient to carry on this work. This Committee believes that the legislative bodies of Los Angeles City and County would readily recognize the importance of the work outlined and would be glad to provide sufficient funds to carry out the project.

This Committee makes no specific recommendations as to changes in criminal procedure in California. The last Legislature provided for a State commission to revise the criminal laws and provide a modern criminal code. Major Walter K. Tuller, a member of the Los Angeles Bar Association, is chairman of this commission. The Committee on Criminal Law and Procedure commends the principle of criminal code revision so as to give the people of this State a system of criminal procedure applicable to modern conditions.

This Committee urges that members of the Los Angeles Bar Association give all possible assistance to the State Commission engaged in this work.

Respectfully submitted,

PERCY V. HAMMON, *Chairman*,  
FRANK P. DOHERTY,  
JAMES DONOVAN,  
LOUIS G. GUERNSEY,  
RAYMOND I. TURNEY,  
JOHN W. MALTMAN,  
J. M. FRIEDLANDER,  
W. I. GILBERT.

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## Bar Association Meeting

The regular monthly meeting of the Association was held at the Alexandria Hotel on Thursday evening, April 22.

Judge Elliott Craig of the Superior Court read a delightfully interesting and instructive paper dealing with the problems which confront the presiding judge's department. It will be recalled Judge Craig was the Presiding Judge of the Superior Court during the year 1925. The paper was extremely well received. It will be printed in full in the next issue of the Bulletin so that all members may have it available for reference.

The work of the Program Committee, under the guidance of Trustee Campbell, is already reflecting itself in the successful meetings of the Association. It is the purpose of the committee, in arranging programs, to present papers on subjects of practical value to the members of the bar. As stated by Chairman Rosecrans in a recent letter to the members of the Association, "Past experience has clearly indicated that the largest attendance of the membership is attained by the announcement of subjects of educational value—subjects confined to practical, legal problems which most frequently arise."

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## Message of the Los Angeles Chapter of Certified Public Accountants

There have been three clearly defined stages in the development of Certified Public Accountancy. Originally, there was the Accountant, whose work was defined as early as the decade in which Columbus discovered America as intended "to give the trader, without delay, information as to his assets and liabilities". At first, the accountant devoted himself to recording accountancy—assembling financial facts; this developed into constructive accountancy; and finally came the advance to analytic accountancy, that is, the broadening of the science to assist in determining future business policy from a scientific analysis of past financial experience. The distinctive feature of the accountant's work was that it was private.

Then, about the middle of the last century, we find the Public Accountant. The theretofore private accountant now rendered a service to different clients in different lines of business. The work broadened to the more constructive service of devising and installing methods of accounting

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## Los Angeles Chapter of the California State Society of Certified Public Accountants

and cost accounting peculiarly suitable to individual organizations. The Public Accountant acquired those constructive and analytical attainments that made his service to the public a professional service.

Along with this development of Public Accountancy came the constant advance in the professional character of the work, as well as the public necessity that those who practice this profession should have a distinctive title and their right to practice carefully safeguarded by law. Consequently, it has come about that in every part of the United States Certified Public Account Laws have been enacted, under the provision of which properly accredited accountants are certified by state authority. Public welfare demands that the work of the Public Accountant shall be dependable.

The result has been the establishment of Public Accountancy as a profession and the public designation of those who are competent to carry on this profession as "Certified Public Accountants".

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## Dinner Meeting of Trustees and Judges of the Superior Court

The Board of Trustees of the Association and the Judges of the Superior Court held an informal dinner meeting at the Athletic Club on Monday evening, April 19.

For some time, a Special Committee of the Board of Trustees, composed of Trustees Hubert Morrow, Guy R. Crump and Kemper B. Campbell, has been meeting jointly with a similar committee of the Judges of the Superior Court, composed of Judges Albert Lee Stephens, Hartley Shaw, John L. Fleming and Elliott Craig, in an effort to solve some of the problems, which seem to impede the course of justice. The meeting of the Board of Trustees and the Judges of the Superior Court was the suggestion of these joint committees.

The meeting was presided over by Judge Albert Lee Stephens. President Overton wel-

comed the Judges on behalf of the Board of Trustees and expressed the belief that such meetings would doubtless be productive of material results.

Trustee Morrow, Chairman of the Special Committee of the Board of Trustees, gave a resume of the work of the joint committees, and requested the benefit of any suggestions with reference to the problems under consideration.

The meeting was then turned into an open forum discussion of germane problems, in the course of which there was extended discussion on such topics as bar primaries or plebiscites, the congested condition of the courts and proposed new legislation. It was not the purpose of the meeting to adopt any formal action.

## Reports of Committees

*Continued from Page 6*

### Report of Committee on Publicity

No special matters were referred to this Committee during the past year. As Chairman of the Committee I have, whenever called on, secured notices of certain of the Association activities, as was done during the Membership Campaign.

In the month of November I made to the President of the Association a suggestion which would work for closer relationship between the Bar Association and the press of the city. The suggestion was this:

Whenever the subjects discussed before our monthly meetings are such as carry not merely professional appeal, but an appeal to the public in general, the Secretary be in-

structed to address a letter to the Managing Editors of the six daily newspapers of this city, calling attention to the topic to be discussed and requesting representatives of the newspapers to be guests of the Association on that evening. In the letter should be enclosed two prepaid tickets to the dinner, to be used by such members of the staff of each newspaper as the editor might designate.

This suggestion has been acted upon and I think that if it were adopted as a definite policy it would work to the advantage of the Association.

Yours very truly,

L. R. YANKWICH, *Chairman.*

## A Resolution From the American Legion

The Secretary has received the following resolution from the Los Angeles City Interpost Council of the American Legion, with the request that it be published in the Bulletin:

### RESOLUTION

WHEREAS, Southern California and particularly the City of Los Angeles, has been and is now being solicited by a group of professional solicitors, who are making it their business to sell window placards and calendars, purporting to commemorate Memorial Day and other patriotic holidays, and,

WHEREAS, it has come to the attention of the American Legion of the City of Los Angeles that these solicitors are representing that the proceeds of the sale of such placards are for the benefit of veteran organizations, including the American Legion, and,

WHEREAS, the American Legion has endorsed no such movement and from investigation has found that, to the best of our belief,

the solicitors of such placards are the sole beneficiaries;

NOW THEREFORE, be it resolved by the Los Angeles City Interpost Council of the American Legion that the members of the American Legion take all possible steps to discourage and stop this practice of commercializing Memorial Day and other patriotic holidays in this misleading manner, and,

BE IT FURTHER RESOLVED, that copies of this resolution be sent to every patriotic organization, service club, the Chamber of Commerce and the Press of the City of Los Angeles, urging such organizations to inform their members and readers of this condition.

CLARENCE L. KINCAID, *Commander.*

CHARLES P. OGDEN, *Adjutant.*

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## Solicitation of Judges for Donations

The Board of Trustees recently adopted the following resolution:

WHEREAS, the Judges of the various courts in Los Angeles County are frequently solicited to contribute or subscribe funds to various publications or organizations for the implied purpose of giving such Judges publicity or assuring them of the support of such publications or organizations; and

WHEREAS, such solicitation consumes valuable time and has grown to an extent which seriously embarrasses the Judges and would impose upon them an unwarranted expenditure of money; and

WHEREAS, such practices lower the independence and dignity of the judiciary and tend to bring the administration of justice into disrepute;

NOW THEREFORE, it is resolved that the practice of solicitation of Judges to contribute funds to such publications or organizations for the real or alleged purpose of directly or indirectly furnishing favorable publicity or support is improper, and contributions for any such purposes should be refused by the Judges.

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